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c 77 Land Transfer Tax Amendment Act, 1989 (No. 2)

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CHAPTER 77

An Act to amend the Land Transfer Tax Act

Assented to December 19th, 1989

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Land Transfer Tax Act*, being chapter 231 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

2a.—(1) For the purposes of this section, a disposition of a beneficial interest in land includes,

Disposition
of beneficial
interest in
land

- (a) a sale, transfer or assignment, however effected, of any part of a beneficial interest in land; and
- (b) any change in entitlement to or any accretion to a beneficial interest in land,

but does not include,

- (c) a disposition of agricultural land, within the meaning of subsection 2 (2b);
- (d) a transfer of a beneficial interest in land which occurs by reason of the death of the owner of the interest, if the transfer is not required to be made under the terms of an agreement enforceable by or against the person legally or beneficially entitled to the interest immediately following the death of the owner;
- (e) a transfer or assignment of a beneficial interest in land by a debtor to a creditor for the purpose only of providing security for a debt or loan and a transfer or reassignment by the creditor to the debtor of the security;
- (f) a lease of land or a transfer of the interest of a lessee under a lease of land if, at the time of the disposition, the unexpired term of the lease, includ-

ing any renewals or extensions provided for in the lease, does not exceed fifty years; or

- (g) a transfer or assignment of a beneficial interest in land arising on the execution of an agreement of purchase and sale of an interest in the land, or by a subsequent assignment of such beneficial interest by a purchaser under the agreement or by an assignee thereof, where,
 - (i) the value of the consideration specified in the agreement has not been paid to or for the benefit of the transferor, or
 - (ii) the liability for the value of the consideration specified in the agreement has not been assumed by or on behalf of the transferee.

Tax on
disposition of
a beneficial
interest

(2) If there is a disposition of a beneficial interest in land, tax at the rates otherwise determined under section 2 is payable to the Treasurer on the thirtieth day after the date of the disposition as if the disposition were a conveyance of land tendered for registration.

By whom
payable

(3) The tax under subsection (2) is payable by every person who acquires a beneficial interest in land or whose beneficial interest in land is increased as a result of the disposition.

Multiple
interests

(4) If more than one person acquires a beneficial interest in land, or more than one person's beneficial interest in land is increased as a result of the disposition, each of them is liable to pay only that percentage of the tax otherwise payable under this section that reflects their proportional share of the acquisition of or increase in beneficial interest.

Exceptions

(5) No tax is payable by virtue of this section if,

- (a) an instrument evidencing the disposition of the beneficial interest in land is registered within thirty days after the date of the disposition and the tax payable under section 2 on the registration of the instrument has been paid; or
- (b) the disposition of the beneficial interest in land is prescribed as being exempt.

Tax paid
once only

(6) If a person has paid tax under this section and proposes to register an instrument evidencing the disposition, no tax is payable under section 2 if the Minister is satisfied that the instrument,

- (a) does not transfer any beneficial interest in land to any person other than a person who has paid tax on the disposition under this section; and
- (b) does not increase any person's beneficial interest in land in excess of the beneficial interest transferred by the disposition.

(7) If the tax payable under this section has been paid, or no tax is payable under this Act, the Minister, or a person authorized in writing by the Minister, shall so verify over his or her signature on the instrument.

Verification
of Minister

(8) An instrument verified under subsection (7) may be registered without the payment of tax under section 2 and without the production of the affidavits otherwise required by this Act.

Registration
of instrument

(9) If the disposition of a beneficial interest in land is from one corporation to another corporation, each of which is an affiliate of the other immediately before and at the time of the disposition, the Minister may defer the payment of the tax payable by virtue of this section by the corporation acquiring the beneficial interest if,

Deferred
payment

- (a) before the thirtieth day after the date of disposition of the beneficial interest in the land, the corporation applies to the Minister for the deferral and submits a written undertaking satisfactory to the Minister, undertaking that for a period of at least thirty-six consecutive months immediately following the date of the disposition,
 - (i) the corporation making the disposition and the corporation acquiring the beneficial interest on the disposition will continue to be affiliates of each other, and
 - (ii) the beneficial interest in the land will continue to be owned by the corporation acquiring the beneficial interest on the disposition or by a corporation that is an affiliate of that corporation and with the corporation which made the disposition of the beneficial interest in the land;
- (b) security for the tax in a form and of a kind acceptable to the Minister is furnished to the Minister; and

- (c) no conveyance or instrument evidencing the disposition has been registered.

Extension of
time

(10) The Minister may extend the time for applying for a deferral and submitting the undertaking referred to in subsection (9) if the Minister is satisfied that any delay by the corporation in applying for the deferral or submitting the undertaking was not for the purpose of attempting to delay, avoid or evade the payment of the tax.

Cancellation
to tax

(11) The Minister shall return the security furnished in respect of the deferral granted under subsection (9) and the amount of tax deferred is no longer owing by reason of this section if,

- (a) the Minister is of the opinion that the undertaking given under subsection (9) has been satisfied and no conveyance or instrument evidencing the disposition of the beneficial interest in land has been registered;
- (b) a conveyance or instrument evidencing the disposition of the beneficial interest in land to the corporation has been registered and the tax payable under section 2 on the registration has been paid; or
- (c) there has been a disposition of the beneficial interest in the land, or a conveyance of the land, by the corporation, or by an affiliate of the corporation, to a person who is not an affiliate of the corporation and tax has been paid under this Act in respect of that disposition or on registration of the conveyance, as applicable.

Dissolution
or
winding-up

(12) For the purposes of subsection (11), if a corporation was an affiliate of another corporation immediately before winding-up or dissolving, the corporation shall be considered to continue to exist and to be an affiliate of that other corporation for the purpose of determining whether any undertakings given under subsection (9) have been fulfilled with respect to any disposition of a beneficial interest in land made before the winding-up or dissolution of the corporation or in the course of any distribution of property of the corporation on the winding-up or dissolution.

Requirement
to pay tax

(13) Nothing in subsection (9) or (11) relieves any person from the payment of tax under this Act upon the registration of a conveyance which evidences the disposition of a beneficial interest in land.

(14) In this section, "affiliate" means an affiliate as described in subsection 1 (2) of the *Securities Act*.

Definition
R.S.O. 1980,
c. 466

2.—(1) Section 4 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 20, section 3 and 1989, chapter 39, section 3, is further amended by adding thereto the following subsections:

(8a) Every person liable to pay tax under section 2a shall deliver a return to the Minister, in a form approved by the Minister, on or before the day when the tax is payable under that section and shall remit the tax payable with the return.

Idem

(8b) Every person who holds a legal interest in land in trust for any other person shall, within thirty days of becoming aware of any disposition of a beneficial interest in land to which section 2a applies, deliver to the Minister a return in a form approved by the Minister setting out the particulars of the disposition and such other information as the Minister may require for the purpose of determining the tax liability under this Act.

Idem

(9a) Every person who fails to deliver a return as required by subsection (8a), or who fails to remit with the return the amount of tax payable, shall pay, when assessed therefor, a penalty of an amount equal to the amount of the tax payable.

Idem

(2) The said section 4 is further amended by adding thereto the following subsection:

(8c) If a legal interest in land is held in trust for another person by more than one trustee, the return required to be delivered under subsection (8b) may be made by one or more of the trustees on behalf of all of the trustees.

More than
one trustee

(3) Subsections 4 (10) and (11) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 20, section 3, are repealed and the following substituted therefor:

(10) The Minister may extend the time for making the return required under subsection (8), (8a) or (8b) either before or after the time for making it has expired.

Extension of
time for
returns

(11) In addition to any penalty otherwise payable under this Act, every person who has failed to deliver a return as required by subsection (8), (8a) or (8b) is guilty of an offence and on conviction is liable to a fine of not less than 25 per

Offence

cent of the tax payable and not more than double the amount of the tax payable.

3. Section 5 of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 20, section 4 and amended by 1989, chapter 72, section 79, is further amended by inserting after "subsection 4 (8)" in the third line "(8a) or (8b)".

4. Section 7 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 20, section 5 and 1985, chapter 21, section 5, is further amended by adding thereto the following subsection:

Refund of
tax paid
under section
2a

(4a) If the Minister is satisfied that a person has paid tax under section 2a on a disposition of a beneficial interest in land and under section 2 upon the registration of an instrument evidencing the disposition of the beneficial interest, the Minister may, upon application by the person in the prescribed manner within three years after the date of registration of the instrument, refund the tax paid under section 2a to that person.

5. Subsection 10 (1) of the said Act is repealed and the following substituted therefor:

Assessment
of tax,
penalties,
etc.

(1) If a person responsible for the payment of tax fails to pay it as required under this Act or if a person is liable to pay a penalty imposed by this Act, the Minister may make an assessment of the amount of the tax or penalty, together with any interest imposed thereon under this Act.

6. Subsection 15 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 20, section 9, is repealed and the following substituted therefor:

Interest on
unpaid tax

(1) If a tax imposed by this Act or any penalty assessed under this Act is not paid at the time required, interest on the unpaid amount shall be paid to the Treasurer at such rate as is prescribed by the Lieutenant Governor in Council.

Idem

(2) The Lieutenant Governor in Council may prescribe the method by which interest is to be calculated.

Restriction

(3) No interest is payable for any period of time before the 10th day of April, 1974.

7. Section 16 of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 20, section 10 and amended by 1985, chapter 21, section 9, is further amended by adding thereto the following subsection:

(11) Where tax is payable by virtue of section 2a, the disposition of the beneficial interest in the land shall, for the purposes of this section, be considered to be a conveyance of land deemed to be tendered for registration or registered on the thirtieth day after the date of the disposition.

Deeming
provision

8. Subsection 18 (2) of the said Act, as amended by the Statutes of Ontario, 1989, chapter 39, section 6, is further amended by adding thereto the following clauses:

(aa) exempting from tax arising under section 2a prescribed dispositions or prescribed beneficial interests in land to which it is determined that section 2a was not intended to apply, or exempting from such tax prescribed dispositions of beneficial interests in land to persons prescribed for the purposes of this clause;

(i) prescribing anything that is required or permitted by this Act to be prescribed, determined or defined by regulation.

9. Any return required to be filed under subsection 4 (8a) or (8b) of the said Act, as enacted by section 2 of this Act, shall be deemed to have been delivered at the time required under the said Act if delivered on or before the thirtieth day following the day this Act receives Royal Assent.

Transition

10.—(1) Except as provided in subsection (2), this Act comes into force on the day it receives Royal Assent.

Commence-
ment

(2) Sections 1 to 4 and sections 6 to 8 shall be deemed to have come into force on the 18th day of July, 1989 and apply with respect to dispositions of beneficial interests in land after that date other than,

Idem

(a) beneficial interests in land acquired pursuant to an agreement in writing to acquire the beneficial interest entered into before the 19th day of July, 1989 or as part of a lawful distribution to the public in accordance with a prospectus, preliminary prospectus or registration statement filed before the 19th day of July, 1989 with a public authority in Canada in accordance with the applicable securities legislation of Canada or of any province and, where required by law, accepted for filing by that public authority; and

- (b) **beneficial interests in land acquired before the 1st day of January, 1990 where arrangements in writing for the disposition were substantially advanced before the 19th day of July, 1989.**

Short title

11. The short title of this Act is the *Land Transfer Tax Amendment Act, 1989 (No. 2)*.